1848

SUPREME COURT OF THE UNITED STATES.

No. 90.

JAMES NORRIS, PLAINTIFF IN ERROR,

vs.

THE CITY OF BOSTON.

IN ERROR TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS.

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J. & G. S. GIDEON, printers.

UNITED STATES, *ss:*

The President of the United States, to the judges of the supreme judicial court of Massachusetts, holden in and for the county of Suffolk, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between James Norris, plaintiff, and the City of Boston, defendant, in a plea of the case, a manifest error has intervened, to the great damage of the said Norris, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the second Monday of January next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this nineteenth day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh.

FRANCIS BASSETT, *Clerk.*

Allowed by LEMUEL SHAW, *Ch. J. S. J .C.*

COMMONWEALTH OF MASSACHUSETTS:

In obedience to the within precept, I herewith distinctly and openly send, to the honorable chief justice and associate justices of the Supreme Court of the United States, the record and process of the suit of James Norris, plaintiff, and the City of Boston, defendant, with all things touching the same, together with the said writ, and have annexed the same.

Witness my hand and seal this twenty-ninth day of December, in the year of our Lord eighteen hundred and forty-two.

LEMUEL SHAW, [SEAL.]

Chief Justice of the Supreme Judicial Court.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

Supreme judicial court to the City of Boston, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington

on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of this court, wherein James Norris is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Lemuel Shaw, chief justice of the supreme judicial court of Massachusetts, this nineteenth day of December, in the year of our Lord eighteen hundred and forty-two.

LEMUEL SHAW, *Ch. J. S. J. C.*

SUFFOLK, *ss:*

BOSTON, *December* 19, 1842.

By virtue hereof, I this day summoned the within named City of Boston to appear at the time and place within appointed, by leaving an attested copy of this precept with Jonathan Chapman, esq., mayor of said City of Boston, and with Samuel F. McCleary, esq., clerk of said City of Boston.

WATSON FREEMAN, *Dep'y Sheriff.*

Fees, summons, and travel,	34
Copies,	1 00
	$1 34

UNITED STATES OF AMERICA, *Supreme Court:*

JAMES NORRIS, plaintiff in error,
vs.
CITY OF BOSTON, defendants.

Assignment of Errors.

On a judgment of the supreme judicial court, begun and holden at Boston, within and for the county of Suffolk, and State of Massachusetts, on the third Tuesday of November, in the year of our Lord eighteen hundred and forty-two, wherein the said Norris is plaintiff, and the said City of Boston are defendants:

And the said Norris prays for a writ of error to issue, returnable to the next term of the Supreme Court to be holden at the city of Washington, in the District of Columbia, and assigns for errors in the records of process and judgment aforesaid, the following, to wit:

That the judgment rendered in the supreme judicial court of Massachusetts in this case, it being the highest court of law and equity of the said State in which a decision could be had in said case, should be reversed, for the reason following, viz: that the act of the Legislature of the Commonwealth of Massachusetts, set out in the record in the said cause, is repugnant to the provisions of the Constitution and treaties of the United States, and is therefore void.

There is error also in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was

given for the said City of Boston against the said James Norris; whereas, by the law of the land, the said judgment ought to have been given for the said James Norris against the said City of Boston, and the said James Norris prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

JAMES NORRIS,
By THEODORE OTIS,
Attorney for him.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk and Nantucket, ss:*

At the supreme judicial court begun and holden at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the third Tuesday of November, being the fifteenth day of said month, in the year of our Lord one thousand eight hundred and forty-two:

JAMES NORRIS, of St. John's, in New Brunswick, master mariner, plaintiff,
against
THE CITY OF BOSTON, in said county of Suffolk, defendant.

In a plea of the case, for that the said defendant, on the fifth day of July, A. D. 1839, being indebted to the plaintiff in the sum of three hundred and one dollars, for goods sold and delivered by the plaintiff to the said defendant, and in a further sum of the same amount for work done and materials for the same provided by the plaintiff for the said defendant at the said defendant's request; and in a further sum of the same amount by the plaintiff lent to and paid for the said defendant, at the said defendant's request; and in a further sum of the same amount for money received by the said defendant to the plaintiff's use; and in a further sum of the same amount for interest for the plaintiff's forbearance, at the said defendant's request, of moneys due and owing from the said defendant to the plaintiff; and in a further sum of the same amount for money found to be due from the said defendant to the plaintiff, on an account stated between them, in consideration thereof promised to pay said several sums of money to the plaintiffs on demand; but yet, though requested, has never paid the same, nor any part thereof, to the damage of the said plaintiff, as he said, the sum of three hundred and one dollars.

This action was commenced at the October term of the court of common pleas, A. D. 1837, when and where the parties appeared, and upon certain matters of law being submitted to the court, (as in the plaintiff's bill of exceptions are set forth,) it was ordered by

the court there, that the plaintiff be nonsuit. And thereupon the said plaintiff, by his attorney, alleged sundry exceptions to the opinion and directions of said court in certain matters of law, and the same having been reduced to writing, and being presented to the court and found conformable to the truth of the case, were allowed and signed by the presiding judge; and it was thereupon ordered, that all further proceedings be stayed in said court of common pleas.

Said cause was entered in this court at the November term, A. D. 1839, when and where the parties appeared; thence it was continued from term to term unto this term.

And now the parties appear, and after a full hearing the case is committed to a jury, sworn according to law to try the same, who returned their verdict therein upon oath, that is to say: they find, that at a session of the Legislature of the Commonwealth of Massachusetts, holden at the city of Boston, on the 20th of April, 1837, the following law was passed and enacted, to wit:

"*An act relating to alien passengers.*"

Sec. 1st. When any vessel shall arrive at any port or harbor within this State, from any port or place without the same, with alien passengers on board, the officer or officers, whom the mayor and aldermen of the city, or the selectmen of the town where it is proposed to land such passengers, are hereby authorized and required to appoint, shall go on board such vessels and examine into the condition of said passengers.

Sec. 2d. If, on such examination, there shall be found among said passengers any lunatic, idiot, maimed, aged or infirm person, incompetent, in the opinion of the officer so examining, to maintain themselves, or who have been paupers in any other country, no such alien passenger shall be permitted to land, until the master, owner, consignee, or agent of such vessel, shall have given to such city or town a bond, in the sum of one thousand dollars, with good and sufficient security, that no such lunatic or indigent passenger shall become a city, town, or State charge, within ten years from the date of said bond.

Sec. 3d. No alien passenger, other than those spoken of in the preceding section, shall be permitted to land, until the master, owner, consignee, or agent of such vessel, shall pay to the regularly appointed boarding officer, the sum of two dollars for each passenger so landing, and the money so collected shall be paid into the treasury of the city or town, to be appropriated as the city or town may direct for the support of foreign paupers.

Sec. 4th. The officer or officers required in the first section of this act to be appointed by the mayor and aldermen, or the selectmen respectively, shall, from time to time, notify the pilots of the port of said city or town of the place or places where the said examination is to be made, and the said pilots shall be required to an-

chor all such vessels at the place so appointed, and require said vessels there to remain till such examination shall be made; and any pilot who shall refuse or neglect to perform the duty imposed upon him by this section, or who shall through negligence or design permit any alien passengers to land before such examination shall be had, shall forfeit to the city or town a sum not less than fifty nor more than two thousand dollars.

SEC. 5th. The provisions of this act shall not apply to any vessel coming on shore in distress, or to any alien passengers taken from any wreck when life is in danger.

SEC. 6th. The 27th section of the 46th chapter of the revised statutes is hereby repealed, and the twenty-eighth and twenty-ninth sections of the said chapter shall relate to the provisions of this act in the same manner as they now relate to the section hereby repealed.

SEC. 7th. This act shall take effect from and after the passage of the same, April 20th, 1837.

And the jury further find:

That the 28th and 29th sections, above referred to, are in the words following, to wit:

SEC. 28th. If any master or commanding officer of any vessel shall land, or permit to be landed, any alien passengers contrary to the provisions of the preceding section, the master or commanding officer of such vessel, and the owner or consignee thereof, shall forfeit the sum of two hundred dollars for every alien passenger so landed; provided always, that the provisions aforesaid shall not be construed to extend to seamen sent from foreign places by consuls or vice-consuls of the United States.

SEC. 29th. If any master or commanding officer of any vessel shall land any alien passenger at any place within this State, other than that to which such vessel shall be destined, with intention to avoid the requirements aforesaid, such master or commanding officer shall forfeit the sum of one hundred dollars for every alien passenger so landed.

And the jury further find:

That the plaintiff in the above action is an inhabitant of St. John's, in the Province of New Brunswick and Kingdom of Great Britain; that he arrived in the port of Boston on or about the twenty-sixth day of June, A. D. 1837, in command of a certain schooner called the "Union Jack," of and belonging to said port of St. John's; there was on board said schooner at the time of her arrival in said port of Boston, nineteen persons, who were passengers in said "Union Jack," aliens to each and every of the States of the United States, but none of them were lunatics, idiots, maimed, aged, or infirm.

That prior to the landing of said passengers, the sum of two dollars for each and every passenger was demanded of the plaintiff

by Calvin Bailey, in the name of the City of Boston, and said sum, amounting to thirty-eight dollars, was paid by the plaintiff to said Bailey, for permission to land said alien passengers in said Boston; said sum being paid by the plaintiff under a protest that the exacting the same was illegal.

That said Calvin Bailey was the regularly appointed boarding officer for said City of Boston, chosen by the city council (consisting of the mayor and aldermen) in pursuance of said act, entitled "An act relating to alien passengers;" that as such, said Bailey demanded and received said sum of thirty-eight dollars.

But whether upon the aforesaid facts the defendant did promise, the jury are ignorant.

If the court shall be of opinion that the aforesaid facts are sufficient to sustain the plaintiff's claim, then the jury find that the defendant did promise, in manner and form as the plaintiff hath alleged, and assess damages in the sum of thirty-eight dollars.

But if the court are of opinion that the aforesaid facts are not sufficient to sustain the plaintiff's claim, then the jury find that the defendant did not promise in manner and form as the plaintiff hath alleged.

Whereupon, after a full hearing, and all and singular the premises being seen and fully understood, it is ordered by the court here, that judgment be entered on the verdict aforesaid for the defendant.

It is therefore considered by the court, that the said City of Boston recover against the said James Norris, costs of suit taxed at sixty-six dollars and forty-two cents.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

I, Geo. C. Wilde, clerk of the supreme judicial court in and for said county of Suffolk, do certify that the foregoing is a true copy of the record in the above mentioned case, remaining in said court.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at the City of Boston, this twenty-eighth day of December, A. D. 1842.

[L. S.]

GEO. C. WILDE, *Clerk.*

Filed 9th January, 1843.